

This Opinion is Not a  
Precedent of the TTAB

Mailed: September 7, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

*In re Harlequin Enterprises Limited*

---

Serial No. 86761280

---

Cristina N. Rubke of Shartsis Friese LLP  
for Harlequin Enterprises Limited.

Richard F. White, Trademark Examining Attorney, Law Office 123,  
Susan Hayash, Managing Attorney.

---

Before Kuhlke, Adlin and Hightower,  
Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Harlequin Enterprises Limited (“Applicant”), a well-known purveyor of romance novels, seeks to register the mark shown below



(VINTAGES disclaimed) for “wine.”<sup>1</sup> The Examining Attorney refused registration under Section 2(d) of the Act on the ground that Applicant’s mark so resembles the previously-registered mark HARLEQUIN, in typed form, for “liqueur”<sup>2</sup> that use of Applicant’s mark in connection with Applicant’s goods is likely to cause confusion or mistake or to deceive. After the refusal became final, Applicant appealed and Applicant and the Examining Attorney filed briefs.

Our determination under Section 2(d) is based on an analysis of all probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). However, before addressing these and the other relevant likelihood of

---

<sup>1</sup> Application Serial No. 86761280, filed September 18, 2015 under Section 1(b) of the Trademark Act, based on an intent to use the mark in commerce. The application includes this description of the mark: “The mark consists of a book motif featuring the image of a spine of a book with the title VINTAGES BY HARLEQUIN running from the top to bottom of the spine. A decorative border, which features two curved scroll designs opposing one another with a triangle to either side of the scroll designs and an oval in the middle, ornaments on the top and bottom of the words VINTAGES BY HARLEQUIN. Under the bottom border, there is a diamond logo with an H in the middle and the word HARLEQUIN below the diamond. The background has an aged texture on the right edge and towards the top and bottom.”

<sup>2</sup> Registration No. 1405205, issued August 12, 1986; renewed.

confusion factors, we must address Applicant's primary, overarching argument, which is that its fame in connection with romance novels makes confusion between its wine and Registrant's liqueur unlikely.

**Does Applicant's Fame for Romance Novels Make  
Confusion Between its Wine and Registrant's Liqueur Unlikely?**

Applicant has introduced impressive and undisputed evidence, which we accept and find probative and convincing, that its HARLEQUIN mark is quite famous for romance novels. Applicant has also established that it is attempting to extend and leverage its famous HARLEQUIN brand by associating it with a new product, wine.

Vintages by Harlequin was envisioned as an extension of the Harlequin brand into the branded wine space. The concept for the label was directly developed from vintage Harlequin book covers. The front label is designed as a book cover, with a prominent title. In lieu of the author's name, we added the wine varietal. In addition, the vertical branding on the left hand side of the front label was designed to replicate the spine of a classic Harlequin mass market paperback book. The back label for Vintages by Harlequin was designed to mimic the back cover copy found on Harlequin mass market paperback books.

Our expectation is that the wine will appeal to Harlequin book readers as they will recognize the format of the front and back labels and associate it with Harlequin books. In addition, our marketing capabilities will enable us to promote the Harlequin wine with Harlequin books, whether online (for example, selection of book and wine pairings) or in physical retail (with on shelf promotions such as shelf talkers in the book section of a retailer where both books and wine are sold).

Declaration of Simeen Mohsen, Applicant's Vice-President, Strategy and Integration

¶¶ 4-5 (submitted with Office Action response of July 13, 2016). Ms. Mohsen's

Serial No. 86761280

description of Applicant's wine front labels is effectively illustrated by this listing from amazon.com:

Vintages by Harlequin Wine Mixed Pack, 3 x 750 mL at Amazon's Wine Store

amazon  
Try Prime

Wine

Departments ▾ Your Amazon.com Today's Deals Gift Cards & Registry Hello. Sign in Your Account ▾ Try Prime ▾ Lists ▾

Wine Mixed Packs 90+ Wines Red Wines White Wines Sparkling Wines Dessert Wines Rosé Wines French Wines Italian Wines

Join the Amazon Wine Email List > Learn more

Wine  
>  
Mixed Packs

Click image to zoom in  
Click image to zoom out

Vintages by Harlequin Wine  
Mixed Pack, 3 x 750 mL

★★★★★ (5 customer reviews)

Shipping to  [Why?](#)

3 \$50.00  
+ Select state for shipping cost

In Stock.

Ships from and sold by [Vintages By Harlequin](#), Santa Rosa, CA.

Office Action response of July 13, 2016. And her description of Applicant's promotion of VINTAGES BY HARLEQUIN wine together with HARLEQUIN books is illustrated by marketing material accompanying the Amazon listing depicted above:



## OUR WINEMAKING PHILOSOPHY

Vintage Wine Estates is a collection of vintner family-owned wineries and fine wine brands in Santa Rosa, California, the heart of America's top wine-growing regions. Their award-winning brands include Purple Cowboy, Cosentino, and Middle Sister.



*Id.*

Based on this and similar evidence, Applicant argues that “consumers in the U.S. are familiar enough with the Applicant’s romance novel brand, that they would recognize the applied-for Book Spine Design Mark on a bottle of wine and immediately associate the wine with the romance novel brand.” 4 TTABVue 10 (Applicant’s Appeal Brief at 9). In fact, Applicant presents some evidence which tends to support the argument. For example, one Amazon reviewer of Applicant’s wine stated: “... I haven’t tried the wine yet, but the labels are fabulous ... Now waiting for

a special occasion to crack open a Harlequin romance and drink my wine!” Office Action response of July 13, 2016 (“amazon.com” review by Patti TheLoveJunkee). Another stated: “I ordered this wine ONLY because of the label, because a friend got a novel published and I wanted something cute and funny and theme-appropriate ....” *Id.* (“amazon.com” review by BC).

While we accept that Applicant’s HARLEQUIN mark is famous for romance novels, and that some consumers will (at least after examining Applicant’s wine and the associated trade dress and marketing materials) likely associate Applicant’s wine with its books, Applicant’s fame does not make confusion unlikely. And Applicant’s marketing and other efforts to associate its wine with its books, which are not reflected in its application or most importantly the drawing of Applicant’s mark, are essentially irrelevant to the likelihood of confusion analysis. In fact, we recently rejected arguments analogous to those Applicant makes here in *In re I.Am.Symbolic, LLC*, 116 USPQ2d 1406 (TTAB 2015) (hereinafter “*I.Am.Symbolic Board Decision*”), *aff’d*, \_\_ F.3d \_\_, \_\_ USPQ2d \_\_, 2017 WL 3393456 (Fed. Cir. Aug. 8, 2017) (hereinafter “*I.Am.Symbolic Circuit Decision*”); *see also In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993) (“A newcomer does not gain the right to register a substantially identical mark simply because the number of persons exposed to the registrant’s mark may be small in relation to the newcomer’s volume of use.”).

In *I.Am.Symbolic*, the applicant owned trademarks associated with musician William Adams, the Black Eyed Peas frontman known professionally as “will.i.am.”

It sought registration of I AM, in standard characters, for cosmetics and related products, but was refused based on a prior registration for an identical mark for perfume. In an attempt to circumvent the refusal, applicant amended its application to specify that the identified goods are all “associated with William Adams, professionally known as ‘will.i.am,’” and argued that this limitation and will.i.am’s fame as a musician and performer made confusion unlikely. We were not persuaded there, nor are we persuaded by Applicant’s analogous arguments in this case. In fact, even if Applicant had limited its goods in this case to wine “associated with” HARLEQUIN books or Harlequin Enterprises Limited, or added a similar limitation, which it has not, that would not change the result here, any more than it did in *I.Am.Symbolic*. As held in *I.Am.Symbolic Circuit Decision* at \*10, “to the extent the Board agreed with Symbolic that Adams or the mark are famous, such a finding would not support registration of the mark.”

The point is that we must compare Applicant’s mark, as presented in the drawing submitted with its application, to Registrant’s mark depicted in the cited registration. *SCM Corp. v. Royal McBee Corp.*, 395 F.2d 1018, 158 USPQ 36, 37 n.4 (CCPA 1968) (“Certain exhibits reflect the parties’ *current* practice of associating their house marks ‘SCM’ and ‘Royal’ with ‘ELECTRA’ and ‘ELECTRESS’, respectively. However, our concern here, of course, is whether ‘ELECTRA’, the mark actually registered, and ‘ELECTRESS’, the mark for which registration is sought, are confusingly similar when applied to the instant goods.”); *Denney v. Elizabeth Arden Sales Corp.*, 263 F.2d 347, 120 USPQ 480, 481 (CCPA 1959) (“In determining the applicant’s right to

registration, only the mark as set forth in the application may be considered ...."); *Bellbrook Dairies, Inc. v. Hawthorn-Mellody Farms Dairy, Inc.*, 253 F.2d 431, 117 USPQ 213, 214 (CCPA 1958) ("The fact that each of the parties applies an additional name or trademark to its product is not sufficient to remove the likelihood of confusion. The right to register a trademark must be determined on the basis of what is set forth in the application rather than the manner in which the mark may be actually used.").

In other words, any source identifiers or other marketing devices which are not reflected in the drawing of Applicant's applied-for mark are irrelevant to our determination, including because they could in the future change or be eliminated. *In re Shell Oil*, 26 USPQ2d at 1690 n.4 ("Although Shell argues that its use of RIGHT-A-WAY would be in association with other Shell trademarks, the proposed registration is not so limited. Registrability is determined based on the description in the application, and restrictions on how the mark is used will not be inferred."); *Kimberly-Clark Corp. v. H. Douglas Enterprises, Ltd.*, 774 F.2d 1144, 227 USPQ 541, 543 (Fed. Cir. 1985); *Jim Beam Brands Co. v. Beamish & Crawford Ltd.*, 937 F.2d 729, 19 USPQ2d 1352, 1356 (2d Cir. 1991). In short, while Applicant's arguments would be appropriate in a trademark infringement case in court, where "the district court considers the full range of a mark's usages, not just those in the application," they are not appropriate here, where we consider only the mark depicted in the application's drawing page. See *B&B Hardware, Inc. v. Hargis Industries, Inc.*, 135 S. Ct. 1293, 113 USPQ2d 2045, 2049, 2054-55 (2015). Indeed, if Applicant ultimately



obtains the registration it seeks for the mark in its drawing, it would be entitled to use that mark, alone, without the other indicia that Applicant's wine is offered by the source of Harlequin romance novels. *See In re Helene Curtis Industries, Inc.*, 363 F.2d 936, 150 USPQ 668 (CCPA 1966). For this reason, we compare the mark in the cited registration to the mark in Applicant's drawing, without regard to other marks, labels, marketing materials or anything else not reflected in the drawing.

Similarly, we compare the goods identified in the cited registration, liqueur, to the goods identified in the involved application, wine, rather than to books or other products or services.

The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which sales of the goods are directed ... Thus, it was not error, as OSI argues, for the board to give no weight to OSI's evidence purporting to show that OCTOCOM modems are brought (sic) by a particular class of purchasers. It would have been error to do otherwise. Because OSI seeks an *unrestricted* registration, such evidence as there is of a specific class of customers did not relate to a *material* fact.

*Octocom Syst. Inc. v. Houston Computers Svcs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *see also Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) ("It was proper, however, for the Board to focus on the application and registrations rather than on real-world conditions ....").<sup>3</sup> In other words, while Applicant has established that at least some

---

<sup>3</sup> This would be the case even if Applicant had indicated, in its identification of goods, that its wine is associated with HARLEQUIN books or with Applicant. *In re I.Am.Symbolic Board*

of its labels and marketing materials associate Applicant's wine with Applicant's books, there is nothing in Applicant's identification of goods which would limit Applicant's use of the applied-for mark to wine specifically associated with, or intended to call to mind, Applicant's books or other HARLEQUIN marks, goods or services. *In re I.Am.Symbolic Circuit Decision*, 2017 WL 3393456 at \*4 ("It is well established that the Board may not read limitations into an unrestricted registration or application.") (citing *SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983) and 15 U.S.C. § 1057(b)). Rather, if granted the registration it seeks, Applicant would enjoy the benefits of registration of its mark for any and all "wine," regardless of whether it is associated in any way with Applicant, its HARLEQUIN marks or its goods and services.

In short, Applicant's fame for romance novels does "not support registration of the mark." *I.Am.Symbolic Circuit Decision*, 2017 WL 3393456 at \*10. And Applicant's marks and devices used in promoting its wine which are not reflected in the application's drawing page are irrelevant to our analysis. Our task is simply to compare the mark in the application's drawing, and the goods identified in the application, to the mark and goods in the cited registration.

### **Is There a Likelihood of Confusion?**

While Applicant's mark includes a design and additional words absent from the cited mark, the marks are nonetheless more similar than dissimilar "in their

---

*Decision*, 116 USPQ2d at 1410 (indication that goods are "associated with William Adams, professionally known as 'will.i.am.'" does not "alter the nature of the goods identified ...").

entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). In fact, consumers familiar with Registrant’s HARLEQUIN liqueur who encounter Applicant’s mark may very well perceive it to be an extension of Registrant’s HARLEQUIN brand of liqueur into wine. Indeed, “VINTAGES BY HARLEQUIN” conveys that Harlequin is the source and that the goods are a type of wine, as “vintage” means “the yield of wine or grapes from a vineyard or district during one season” and “wine, usually of high quality, identified as to year and vineyard or district of origin.” Office Action of January 13, 2016 (definition from The American Heritage Dictionary of the English Language).

For example, in affirming a refusal to register VANTAGE TITAN based on a registration for TITAN, we stated: “Applicant has taken registrant’s mark and added its ‘product mark’ to it. It is not clear why the addition of the word VANTAGE would avoid confusion. It is more likely to be considered another product from the previously anonymous source of TITAN medical diagnostic apparatus, namely, medical ultrasound devices.” *In re Toshiba Medical Systems Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009). *See generally, Stone Lion Capital*, 110 USPQ2d at 1162 (finding STONE LION CAPITAL confusingly similar to LION and LION CAPITAL); *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1367 (TTAB 2007) (affirming refusal to register CLUB PALMS MVP based on prior registration of MVP, finding consumers “likely to believe that the CLUB PALMS MVP casino services is simply the now identified

source of the previously anonymous MVP casino services”); *In re Pierce Foods Corp.*, 230 USPQ 307, 309 (TTAB 1986) (in dicta, stating that even if Applicant’s proposed amendment to its drawing was accepted, “Applicant’s institutional purchasers, aware of registrant’s CHICKEN BAKE coating mix, may well believe that applicant’s PIERCE CHICK’N BAKE pre-seasoned chicken is a product produced under license from registrant or otherwise sponsored or produced by registrant.”); *In re Riddle*, 225 USPQ 630 (TTAB 1985) (affirming refusal to register RICHARD PETTY’S ACCU TUNE & Design based on registration for ACCU-TUNE); *In re Christian Dior*, 225 USPQ 533 (TTAB 1985) (LE CACHET DE DIOR for men’s dress shirts likely to be confused with CACHET for toilet soap, dresses and cologne); *Key West Fragrance & Cosmetic Factory, Inc. v. The Mennen Company*, 216 USPQ 168 (TTAB 1982) (finding likelihood of confusion between SKIN SAVERS for face and throat lotion and MENNEN SKIN SAVER for cosmetic and toilet preparations, namely, hand and body lotion); *In re Champion International Corp.*, 196 USPQ 48 (TTAB 1977) (affirming refusal to register CHECK MATE based on registration of HAMMERMILL MICR CHECK-MATE); *In re C.F. Hathaway*, 190 USPQ 343 (TTAB 1976) (affirming refusal to register HATHAWAY GOLF CLASSIC based on registration of GOLF CLASSIC).

In this case, the dominant portion of both marks is the identical term HARLEQUIN. Obviously, that is the entirety of Registrant’s mark, and the term VINTAGES in Applicant’s mark is descriptive of if not generic for wine and disclaimed. It is settled that descriptive and disclaimed terms such as VINTAGES are entitled to less weight in our analysis. *Cunningham v. Laser Golf Corp.*, 222 F.3d

943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (“Regarding descriptive terms, this court has noted that the ‘descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.’”) (quoting *In re Nat’l Data*, 224 USPQ at 752); *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009) (BINION’S, not disclaimed word ROADHOUSE, is dominant element of BINION’S ROADHOUSE); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often “less significant in creating the mark’s commercial impression”). While the term “BY” in Applicant’s mark is not disclaimed, it merely communicates that the source of Applicant’s wine is HARLEQUIN, i.e. that the VINTAGES wine is “by Harlequin.” Applicant concedes as much, and as explained above even bases its primary argument on this point, arguing that consumers will perceive BY HARLEQUIN as a reference to Applicant. The problem is that HARLEQUIN also identifies the source of prior Registrant’s liqueur, a product which, as explained below, is related to wine. Confusion as to the source of Applicant’s and Registrant’s alcoholic beverages is likely because at bottom the goods are identified by the identical term HARLEQUIN.

We have not ignored the design element of Applicant’s mark, and acknowledge that it resembles a book spine. However, HARLEQUIN (or perhaps in Applicant’s case VINTAGES BY HARLEQUIN) is the term consumers will use to call for the goods because it is literal. *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987) (holding that “if one of the marks comprises both a word and a design,

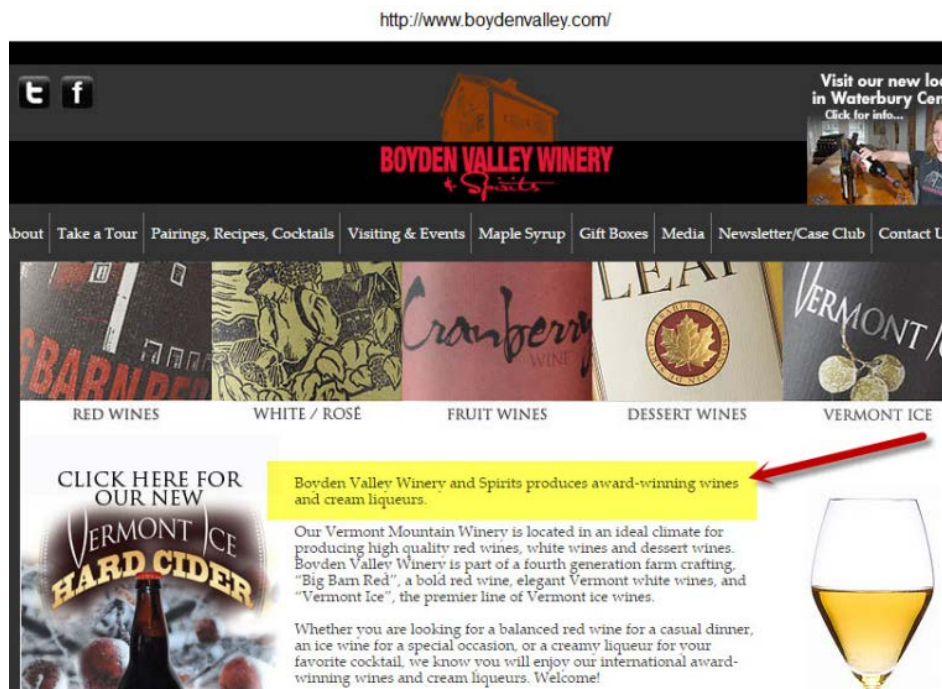
then the word is normally accorded greater weight because it would be used by purchasers to request the goods or services” and “because applicant’s mark shares with registrant’s mark that element responsible for creating its overall commercial impression, the marks are confusingly similar”); *see also In re Viterro Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1911 (Fed. Cir. 2012) (“the verbal portion of a word and design mark likely will be the dominant portion”). Furthermore, Applicant’s mark resembles a book spine not only because of its design elements, but also, and perhaps more importantly, because VINTAGES BY HARLEQUIN is displayed the way a title is displayed on a book spine. This further highlights the literal element of Applicant’s mark. In fact, just as a book title on a book spine identifies the book, in this case VINTAGES BY HARLEQUIN identifies HARLEQUIN, which is identical to the cited mark, as the source of Applicant’s wine. Neither the “diamond logo with an H in the middle” nor the “two curved scroll designs” in Applicant’s mark, both of which are relatively small, detract from the dominance of the literal element VINTAGES BY HARLEQUIN.

In short, because the marks are more similar than dissimilar, this factor weighs in favor of finding a likelihood of confusion.<sup>4</sup>


---

<sup>4</sup> *See United Rum Merchants Ltd. v. Fregal, Inc.*, 216 USPQ 217, 220-21 (TTAB 1982) (“due to imperfect recall and the similarity of the marks, purchasers of applicant’s sherry wine might well assume that it was opposer’s product regardless of inherent differences between sherry wine and coffee-based liqueur; or, perhaps more likely, and even where recall was accurate, purchasers might assume that ‘TIA LOLA’ was the special designation of opposer for an extension of its product line to aperitif wines, particularly because of frequent usage and currency of the ‘TIA’ reference to order opposer’s liqueur or to identify opposer’s liqueur ...”).

As for the goods, the Examining Attorney has introduced substantial evidence that liqueur and wine are related, so much so that some liqueurs contain wine and some wineries also produce liqueurs, apparently under the same trade name or trademark:



http://www.drinkupny.com/Cardamaro-p/s0007.htm




[BLOG](#)
[VIEW CART](#)
[MY ACCOUNT](#)

[WINE BY VARIETAL](#)
[WINE BY COUNTRY](#)
[WINE BY PRICE](#)
[SPIRITS ETC](#)
[FREE SHIPPING DEALS](#)

[90+ POINT WINE](#)
[KOSHER WINES & SPIRITS](#)
[NEW ARRIVALS](#)
[FEATURED WINES](#)
[WINE EDUCATION](#)

Home > Spirits etc > Liqueur >

### Cardamaro Vino Amaro (750ml)



**Sale Price: \$18.99**  
**Regular Price: \$23.99**


Product Code: S0007

Qty:

[Add to Cart](#)

[+ Add to Wishlist](#)


OUR CUSTOMERS ALSO BOUGHT...



**Meletti Amaro Liqueur (750ml)**

Price: \$19.00  
**On Sale: \$16.99**

[Add to Cart](#)



**Amaro CioCiaro Liqueur (750ml)**

Price: \$22.00  
**On Sale: \$19.99**

[Add to Cart](#)

[Larger Photo](#) [Email A Friend](#)

[Facebook](#) [Twitter](#) [Google+](#) [Pinterest](#)


#### Description

Developed over 100 years ago by the Bosca family, the recipe for this wine-based Amaro is a true expression of Piemonte tradition. It is created by infusing Cardoon, Blessed Thistle and other botanicals into the family's estate wine, which is then rested in new oak for at least six months. The result is a rich, smooth liqueur with wintry notes of fresh pine, roasted nuts and dried fruit, tied together by a subtle smokiness.

**Product of Italy**  
**Alcohol by Volume: 17%**

7:16:13 PM 1/13/2016

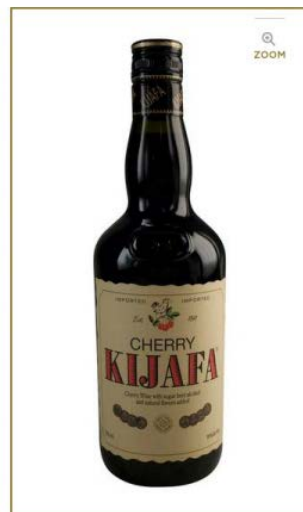
http://www.abcfws.com/product/Kijafa-Cherry-Liqueur/4954.uts



[WINE](#)
[SPIRITS](#)
[BEER](#)
[ACCESSORIES](#)
[RECIPES](#)
[DEALS](#)
[LOCATIONS](#)
[BLOG](#)

[Sign In](#) | [My Preferred Store: Online \(change\)](#)

### Kijafa Cherry Liqueur



### Kijafa Cherry Liqueur

750ml

541505

A sweet, delicious liqueur imported from Denmark, Kijafa is a fortified fruit wine made from cherries with added natural flavors. It contains 16% ABV and is a popular liqueur in Europe. Sweet and drinkable on the rocks or in a tall glass with your favorite soft drink and ice. A surprisingly unique and interesting wine.

Varietal: Red Blend / Other Reds Country: Denmark

Goes Well With:



Sweetness Level: 6





http://www.winemag.com/buying-guide/elisir-gambrinus-wine-based-liqueur-with-natural-aromatics/

WINE ENTHUSIAST

WINE & RATINGS WINE BASICS DRINKS FOOD TRAVEL SUBS

Wine Enthusiast's #1 Best Buy Of The Year! **Shop Now**

BEER & SPIRIT RATINGS

## Elisir Gambrinus Wine Based Liqueur with Natural Aromatics

**92**  
POINTS

The nosing passes discover a curious fig-like bouquet of dried red fruit, browned bitter, black truffles and soft spirit. The palate entry is intensely fig-like, but sour enough to maintain a beguiling freshness; the midpalate offers concentrated flavors of figs, dates and raisins. Finishes moderately sweet, with a dash of bitterness. Unusual but very good.

PRICE	\$25, <a href="#">Buy Now</a>
ALCOHOL	27%

**BUYING**  
Find Ratings  
WINE SPIRIT  
Keyword or brand name

http://www.cocktailsoftheworld.com/liqueurs/wine-based-liqueurs/vermouth.html

Cocktails Of The World

Home » Liqueurs » Wine-based Liqueurs » Vermouth

**Menu**

- Search for Cocktails
- Drinks of the World
- Spirits
- Liqueurs**
  - Berry Liqueurs
  - Cacao Liqueurs
  - Coffee Liqueurs
  - Creamy Liqueurs
  - Flower Liqueurs
  - Fruity Liqueurs
  - Herbal & Spiced Liqueurs
  - Nutty Liqueurs
  - Other Liqueurs
  - Wine-based Liqueurs**
    - Vermouth
    - Dry Vermouth
    - Sweet Vermouth

**Vermouth**

Vermouth is a fortified wine, used as an aperitif and as ingredient for cocktails, infused and flavored with aromatic herbs, spices, and some secret ingredients. Most of the Vermouths are produced in Italy and France.

**Vermouth Styles**

- Dry Vermouth
- Sweet Vermouth

Office Action of January 13, 2016.<sup>5</sup>

<sup>5</sup> Similar evidence is included with the Office Action of August 16, 2016.

The Examining Attorney also relies on a large number of registrations owned by different third parties for marks used on both liqueurs and wine, including:

MARCO ABELLA in standard characters (Reg. No. 4651564) is registered for “wines, sparkling cava wines, spirits and liqueurs.”



(Reg. No. 4612598) is registered for “... wines and liqueurs ....”

PHILIP CARTER in standard characters (Reg. No. 4560377) is registered for “... wines and liqueurs ....”

XIWINE (Stylized) (Reg. No. 4683700) is registered for “liqueurs ... wine.”

LA CASTELLANA in standard characters (Reg. No. 4737807) is registered for “... wines and liqueurs.”

DOMAINE FRANCO CHINOIS & Design (Reg. No. 4856458) is registered for “... wine; liqueurs ....”

BELLA VALLEY (Stylized) (Reg. No. 4823522) is registered for “... liqueurs ... wine ....”

THE FRENCH WARRIOR AND NOBLE WINEMAKER in standard characters (Reg. No. 4884847) is registered for “spirits and liqueurs ...wine.”

Office Action of January 13, 2016.<sup>6</sup> “Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the

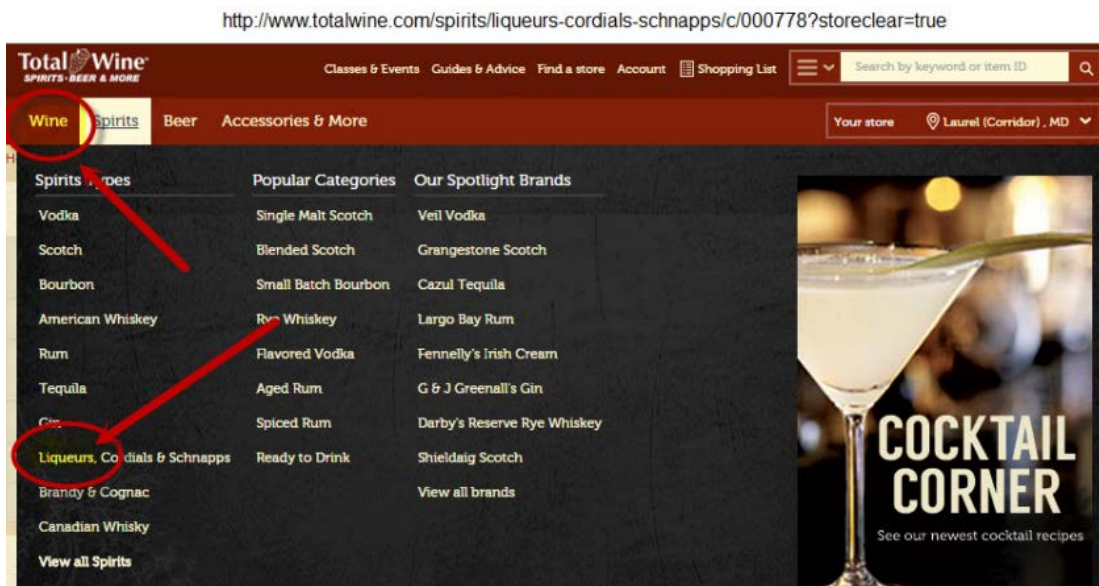
---

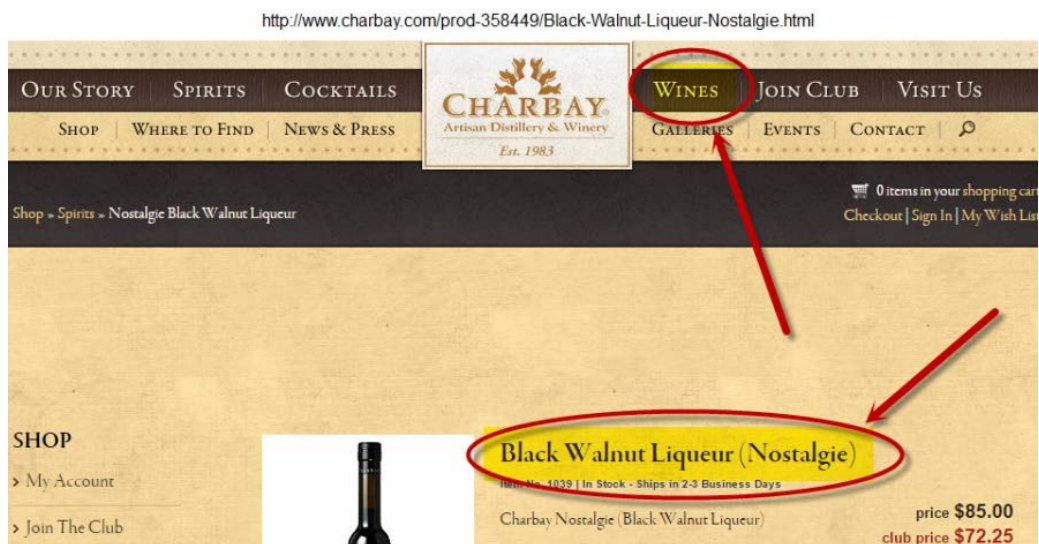
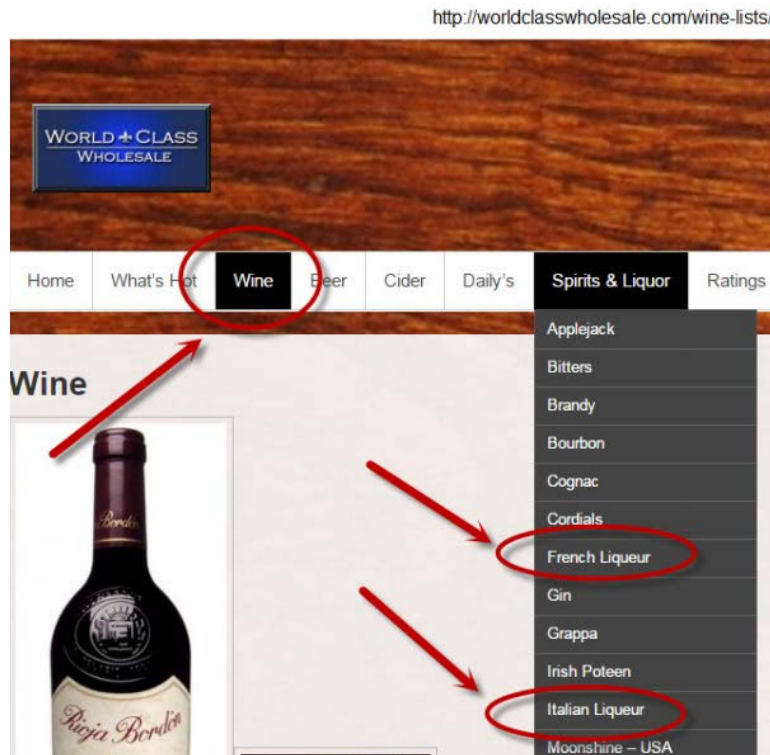
<sup>6</sup> The Examining Attorney submitted 10 additional third-party registrations owned by different entities for marks used for both wine and liqueur. Office Action of August 16, 2016.

Serial No. 86761280

extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source.” See, *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1998); see also *In re Davey Prods. Pty. Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009). This plentiful evidence convinces us that wine and liqueur are related.

Moreover, the channels of trade for wine and liqueur overlap, in both the brick and mortar world and online:







Serial No. 86761280

*Id.* This evidence convinces us that wine and liqueur also have overlapping channels of trade.<sup>7</sup>

Applicant introduced evidence intended to show that HARLEQUIN is commercially weak for wine:



## 2014 Harlequin Reserve Chardonnay

Sold Out

Price: \$26.00

Club Price:

**\$20.80**

Brokenwood Harlequin White 1998

Track Order Customer Care 1.800.592.5870 Daily deals with WineShopper

Ship To CA Most CA orders arrive in 1 to 2 days

Sign In Free Shipping! Account StewardShip My Wine

WINE | GIFTS | DISCOVER

Cart

New Customers Save \$10 Off \$75 with Code NEW10

**Brokenwood Harlequin White 1998**

Other White Blends from Australia

**Sold Out** (was \$12.49)

1998  
BROKENWOOD  
harlequin

☆☆☆☆☆ Add Review

<sup>7</sup> Similar evidence is included with the Office Action of August 16, 2016. While the evidence of overlapping trade channels consists entirely of website printouts, many of the websites not reproduced in this decision make clear that the wine and liqueurs listed online are also available in retail locations, often including the source winery or distillery itself.



Harlequin - Zyme

## Winston's Harlequin Port

Truly the granddaddy of all dessert wines, our Port has had a tremendous following since its introduction. As a wonderful after dinner or dessert drink, Port goes especially well with cheese, fruit, and or chocolates. Aged in French Oak, our Port is a magnificent wine that will cap off any meal with great success.

\$ 15.99

Quantity

1

98 tickets available.



Office Action response of July 13, 2016. We are not persuaded by this evidence that Registrant's mark is so weak that it is not entitled to protection against Applicant's similar mark used on related goods. In the first three examples, it is clear that the

wineries (sources) producing the wines are VERITAS, BROKENWOOD and WARWICK VALLEY WINERY & DISTILLERY, and that “Harlequin” is merely used in the names of a particular type of wine offered by each of these sources. While it is less clear from the fourth example which name identifies the winery or source and which the particular type of wine, there is no indication that this wine is offered in the United States. In any event, three (or four) examples of wine names including HARLEQUIN are not enough for us to find that Registrant’s mark is so weak that Applicant’s mark is entitled to coexist with it on the register, especially where Applicant has not identified any third-party registrations for HARLEQUIN marks used for liqueur other than Registrant’s.<sup>8</sup>

### **Conclusion**

Neither Applicant’s fame nor its association of its wine with its HARLEQUIN mark and romance novels make confusion unlikely. Here confusion is likely, because even assuming that Registrant’s mark is mildly diluted by the few competing uses of HARLEQUIN in wine names, Applicant’s mark is similar to Registrant’s mark and consumers are likely to perceive Applicant’s wine to be a brand extension of Registrant’s HARLEQUIN liqueur. Moreover, the goods are related and their channels of trade overlap.

***Decision:*** The Section 2(d) refusal to register Applicant’s mark is affirmed.

---

<sup>8</sup> We do not find Registration No. 4295161 for the mark ARLEQUIN WINE MERCHANT for wine store, wine club and other wine-related services to be relevant here because the mark does not include HARLEQUIN.